



MAYOR AND COUNCIL AGENDA

NO. 8

DEPT.: Public Works / Engineering
STAFF CONTACT: Craig Daly

DATE PREPARED: 9/15/2005
FOR MEETING OF: 9/26/2005

SUBJECT:

Agreement allowing Sonic Automotive to use a portion of the dedicated public right of way on Congress Street for the construction and maintenance of a private access to their facility until such time that a public road is constructed, the right-of-way is abandoned, or an alternative access is provided to Sonic Automotive.

RECOMMENDATION:

Staff recommends that the Mayor and Council authorize the City Manager to execute documents in a form satisfactory to the City Attorney allowing Sonic Automotive to construct and maintain an access drive within a portion of the public right of way to access facilities on their property.

DISCUSSION:

Background:

Sonic Automotive obtained USE permit approval on October 8, 2003 to construct an automobile dealership at 1125 Rockville Pike. The Use Permit Approval (USE2003-00661) was subject to several conditions including restricting access to align with the existing median break on MD route 355 at the proposed Congress street as the access point to the site.

Access to the Sonic Automotive site from surrounding streets is limited. No access is available from Talbot Street and providing access from MD 355 at a location other than proposed Congress Street would be limited to southbound traffic only. The Maryland State Highway Administration has provided a median cut at Congress Street to allow northbound traffic safe access to the site at this location.

City staff has determined that construction of Congress Street is not necessary at this time and that it will not be detrimental to the City to allow the applicant to construct and maintain a temporary driveway within the dedicated public right of way to permit ingress and egress to the site. The developer is required to construct Congress Street along their frontage, should Rockville deem it necessary.

In order to accommodate the construction of the temporary driveway within the public right of way a license agreement or similar agreement must be entered into defining the terms and conditions for allowing private access within the public right of way.

The final terms of the agreement will be subject to the approval of the City Attorney's office.

PREPARED BY: Craig Daly

Craig Daly, Civil Engineer II

9/21/2005

Date

APPROVE:

Susan T. Straus

Susan T. Straus, P.E., Chief Engineer/Environment

9/21/2005

Date

APPROVE:

Craig L. Simoneau

Craig L. Simoneau, P.E., Director of Public Works

9-21-05

Date

APPROVE:

Scott Ullery

Scott Ullery, City Manager

9/21/05

Date

LIST OF ATTACHMENTS:

Example Right of Entry and Indemnification Agreement

① - ⑩

Map ⑪

Tax Account No.: 04-00145745

RIGHT OF ENTRY AND INDEMNIFICATION AGREEMENT

This Right of Entry and Indemnification Agreement (Agreement) is made this ____ day of _____, 2005, between THE MAYOR AND COUNCIL OF ROCKVILLE, a municipal corporation organized under the Laws of Maryland (the “City”), and SRE-1 VIRGINIA, LLC, a Virginia limited liability company (“SRE”), (the City and SRE together the “Parties”), for the purposes of allowing SRE, and its agents, employees, and invitees, to enter onto certain dedicated public right-of-way known as “Congress Street” and to temporarily use a portion of said dedicated but unimproved right-of-way as a means of ingress and egress from Rockville Pike to the automotive dealership being constructed under Use Permit No.: USE2003-00661 and is made on the following premises.

R E C I T A L S:

WHEREAS, the City has jurisdiction over a dedicated but unimproved public right of way known as Congress Street, a portion of which is depicted on Exhibit A (the “Temporary License Area”) which is attached hereto and incorporated as if fully set forth herein; and

WHEREAS, SRE is the owner of certain real property located within the City of Rockville, Montgomery County Maryland and having an address of 1125 Rockville Pike and being more particularly described as Lot 29, Block 2, of the subdivision known as “Autry Heights,” as per plat thereof recorded in Plat Book 81, Plat 8275 among the Land Records of Montgomery County, Maryland, (the “Property”) which property is adjacent to and confronts a portion of Congress Street along the Temporary License Area; and

WHEREAS, Sonic Automotive, Inc., the parent company of SRE, applied to the City for a Use Permit Application No. USE2003-00661 (the "Use Permit") to construct and operate a new automobile dealership at the Property (the "Project"); and

WHEREAS, the City approved the Use Permit on October 2, 2003, subject to certain conditions, including a requirement that an agreement be entered into with the City, acceptable to the City Attorney, for the future construction of Congress Street, a dedicated public road, along the length of the frontage of the Property; and

WHEREAS, SRE and the City entered into a certain Road Improvement Construction Agreement, dated October 11, 2004 and recorded in Liber _____, folio _____ among the Land Records of Montgomery County, Maryland (the "Road Improvement Agreement") pursuant to which SRE agreed to construct the portion of Congress Street confronting the Property, including the construction of certain storm drainage system as more fully set forth therein; and

WHEREAS, the City's approval of the use Permit was predicated on access to the Project being made via the Congress Street right-of-way; and

WHEREAS, the City has determined that until such time as additional properties confronting Congress Street are developed necessitating the future construction of Congress Street as contemplated by the Road Improvement Agreement that it will benefit the public to authorize SRE to construct and maintain a temporary driveway within the Temporary License Area and to permit ingress and egress to the Project for the benefit of SRE, its agents, employees, suppliers, patrons and invitees via the portion of the Congress Street right-of-way comprising the Temporary License Area upon the terms, conditions and covenants set forth herein.

NOW THEREFORE, in consideration of the foregoing recitals which are incorporated herein, the legal sufficiency of which is hereby acknowledged, SRE and the City hereby agree as follows:

1. **Grant of Temporary License for Use of Congress Street Right-of-Way.**

The City hereby grants to SRE, its successor and assigns, a non-exclusive temporary license in, over and through a portion of the dedicated public right-of-way known as Congress Street, as more fully described on Exhibit A and depicted on Exhibit B, attached hereto and incorporated herein (the "Temporary License Area"). SRE may use the Temporary License Area as a driveway entrance and means of ingress and egress from Rockville Pike to the Project, for the use and benefit of SRE, its agents, vendors, suppliers, contractors, employees, patrons and/or invitees. SRE shall construct, install and maintain, at its sole costs and expense, a driveway over the Temporary License Area in accordance with plans approved by the City, which plans shall be prepared by a licensed, professional engineer in accordance with specifications of the City's Code for Road Construction Standards. SRE shall be responsible for obtaining all permitting and approvals required for the performance of the work. Upon completion of the construction, SRE shall maintain the improvements to the Temporary License Area in good condition and shall cause any required repairs to be made in a timely and workmanlike manner. Except as set forth herein, SRE shall not use, or permit the use, of the Temporary License Area for any other purpose and shall permit unimpeded access across, over and through the Temporary License Area to permit ingress and egress to the properties abutting Congress Street.

2. **Storm Drainage System Construction and Maintenance.** As part of the

approval of the Use Permit for the Project, SRE has been given permission to construct a storm drainage system to serve the Property within a portion of Congress Street. SRE agrees that it will construct the storm drainage system in accordance with the design plans and specifications approved by the City, at SRE's cost and expense, and shall provide for necessary maintenance of said storm drainage system to insure that it is and remains in proper working condition in accordance with the approved design standards of applicable laws, rules and regulations. The City may, but is not obligated to, inspect the storm drainage system. If, after reasonable notice by the City, the Owner shall fail to construct, repair, maintain, or operate the storm drainage system in accordance with the approved design standards and with all applicable laws, rules regulations, the City may, but is not obligated to, perform all necessary construction, repair, maintenance and/or operating work, and may assess SRE for the cost of said work. SRE shall indemnify and save harmless the City and all its officers, employees, agents, and servants from any and all claims or damages of any kind to persons or property arising from the installation, construction, reconstruction, maintenance, repair, operation and use of the storm drainage system. SRE shall notify the City of the legal and/or equitable transfer of any of the SRE's responsibilities for the storm drainage system within thirty days of such transfer, and shall supply the City with a copy of any executed documents of said transfer. SRE shall provide all subsequent owners, successors, assigns and any other party responsible for the maintenance of the storm drainage system with a copy of this Agreement and with accurate as-built construction plans detailing the storm drainage system and its appurtenances.

23. **Termination of License.** This Agreement together with the License granted under Section 1, above, may be terminated by the City upon written notice from the City that (i) construction of Congress Street beyond the limits of the Property is required and that the construction of Congress Street has been completed in accordance with the Road Improvement Agreement; (ii) at any time by the City provided that there is other approved access to the

Property; and/or (iii) the formal abandonment of the portion of the Congress Street right-of-way on which the Temporary License Area lies.

34. **Indemnification.** SRE, hereby agrees to indemnify the City and hold the City harmless, along with respective contractors, subcontractors, agents, officers and employees (together, the "Indemnified Parties") from and against any and all claims, actions, damages, liability and expense in connection with the loss of life, personal injury and/or damage to property arising out of or caused by SRE, its agents, contractors, subcontractors, employees and/or invitees use of or entry upon the Temporary License including any and all claims, actions, damages, liabilities and expenses for such loss resulting from any act or failure to act, intentional or unintentional by SRE, its agents, contractors, subcontractors, employees and/or invitees.

54. **Binding Effect; Recording.** This Agreement shall be effective upon its execution by all parties hereto ~~and shall become irrevocable at such time as the occupancy permit, if more than one such permit is to be issued in connection with the improvements to be constructed pursuant to the Use Permit, has been issued.~~ This Agreement may be recorded in the Land Records of Montgomery County, Maryland and, upon such recordation, the obligations hereunder shall constitute a covenant running with the land and shall be binding upon any successors or assigns of SRE.

65. **Notices.** All notices required hereunder will be sent by courier or certified mail, return receipt requested, to the addresses below, or to such other person or place as either party may designate by providing notice to the other party hereunder.

To the City: Director of Public Works
 City of Rockville

will be construed according to the
 terms and assigns of the

g this Agreement on

...thereof, and there are

the parties have hereunto

a Virginia limited liability



By: _____ (SEAL)
Name:
Title:

ATTEST:

THE MAYOR AND COUNCIL OF ROCKVILLE,
a Municipal corporation

By: _____ (SEAL)
Name:
Title: City Manager

ACKNOWLEDGEMENTS ON FOLLOWING PAGES

STATE OF _____)
COUNTY OF _____) ss:

I HEREBY CERTIFY that on this ____ day of _____, 2005, before the undersigned officer, a notary public in and for the State and County aforesaid, personally appeared _____, the _____ of SRE VIRGINIA-1, LLC, a Virginia limited liability company, known to me or proven to be the person whose name is subscribed to the within instrument and did acknowledge that he executed the same in his capacity as _____ of SRE VIRGINIA-1, LLC for the purposes therein contained as its act and deed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: _____

STATE OF MARYLAND:

SS:

COUNTY OF MONTGOMERY:

I hereby certify that on this ____ day of _____, 2005, before me, a Notary Public in and for the State and County aforesaid, personally appeared _____, who acknowledged himself/herself to be the City Manager of the Mayor and Council of Rockville, a municipal corporation, and in such capacity, being authorized to do so, executed the foregoing and annexed instrument on behalf of the corporation for the purposes therein contained, and acknowledged the same to be the act and deed of the corporation, by signing the name of the Mayor and Council of Rockville by himself/herself as City Manager.

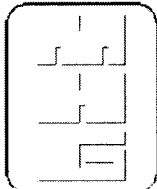
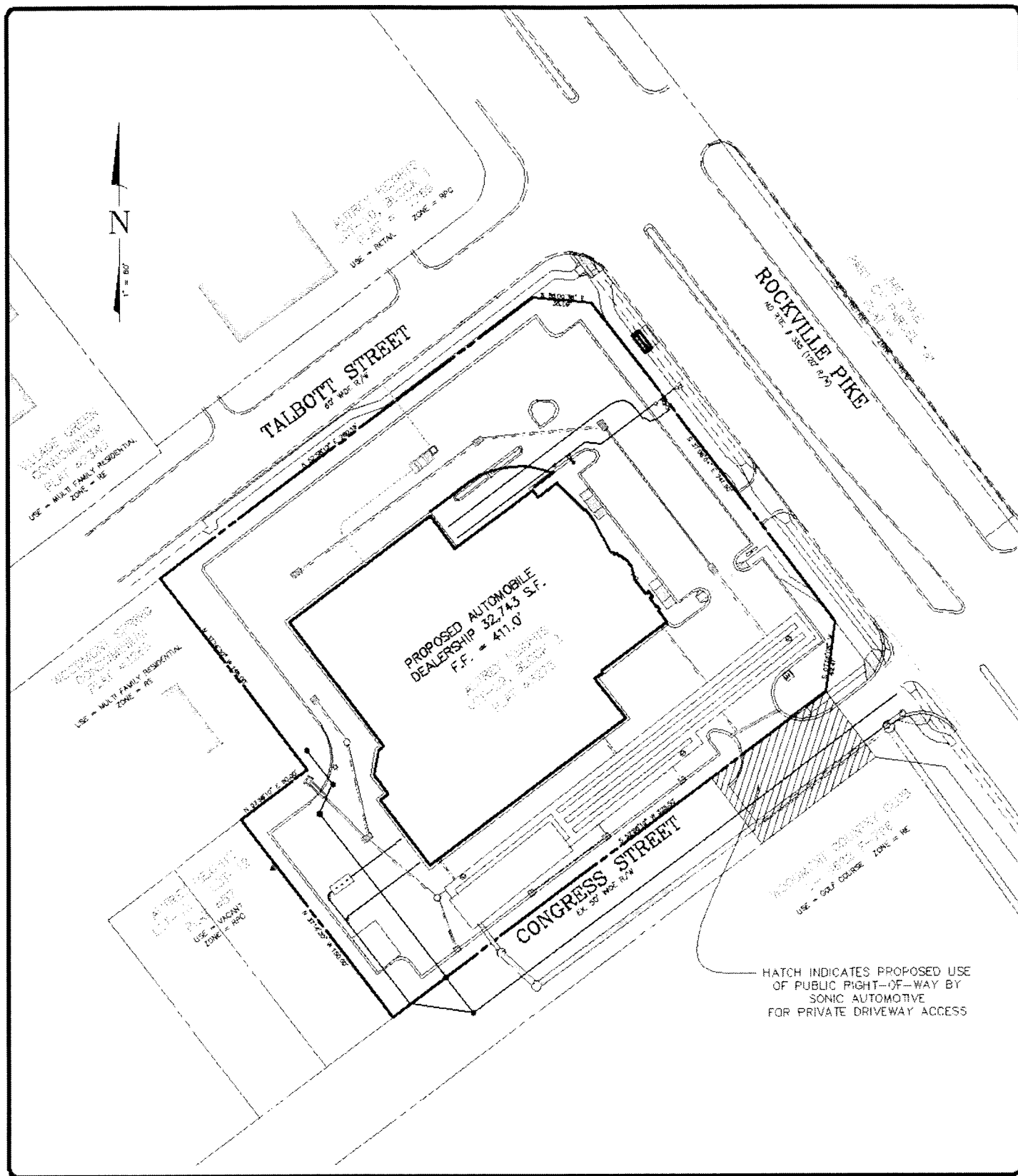
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

I HEREBY CERTIFY that I am an attorney duly admitted to practice before the Court of Appeals of Maryland and that this instrument was prepared under my supervision.

Robert E. Gough



PROJECT: SONIC AUTOMOTIVE

**CONGRESS STREET
PUBLIC USE AGREEMENT EXHIBIT**

JOB NO.: 2002-112-12

DATE: 9-21-05

SCALE: 1" = 80'